

**RIPARIAN PROTECTION AND MINING PRACTICES ORDINANCE
of the
HOOPA VALLEY TRIBE**

**HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA**

**TITLE 35
HOOPA VALLEY TRIBAL CODE**

ORDINANCE NO. 3-92

DATE APPROVED: JUNE 4, 1992

SUBJECT: RIPARIAN PROTECTION AND MINING PRACTICES

WHEREAS: The Hoopa Valley Tribe adopted a Constitution and Bylaws (Tribal Constitution) on June 20, 1972, which was approved by the Commissioner of Indian Affairs on August 18, 1972, and ratified and confirmed by Congress in 1988 in section 8 of Pub. L. 100-580, and Article V of this Constitution establishes that the Hoopa Valley Tribal Council (Tribal Council or Council) is the governing body of the Tribe, and under Article IX, the Council is authorized to: administer all tribal property, § 1(a); enforce the protection of tribal property, wildlife, and natural resources, § 1(e); provide assessments or license fees upon persons doing business or obtaining special privileges within the Reservation, § 1(f); negotiate with the Federal, State, and local governments on behalf of the Tribe, § 1(g); prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets, § 1(i); exclude from the unallotted lands of the Reservation persons not legally entitled to reside or otherwise be present therein, § 1(j); safeguard and promote the safety and general welfare of the Tribe and the Reservation community by among other things regulating the conduct of trade and the use and disposition of property within the Reservation, § 1(l); and

WHEREAS: Since time immemorial, the Trinity River, its tributary streams, the streambeds thereof, and the riparian areas and gravel bars adjacent thereto, have been natural resources of the most profound significance to the Hoopa Valley Tribe, and Hoopa Indians have always used these resources for cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life; and

WHEREAS: It is the position of the Tribe that the bed of the Trinity River, as well as the gravel bars and riparian areas adjacent thereto which lie outside the stakelines of the allotments and former allotments near the River, continue to

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be unallotted lands of the Hoopa Valley Tribe held in trust for the Tribe by the United States; and

WHEREAS: The gravel resources in the Trinity River riparian area are a mineral resource within the meaning of federal and tribal law, and extraction or surface mining of these gravel resources has the potential both to generate revenues and create employment for the Tribe and to significantly harm fundamental tribal values in the Trinity River riparian area; and

WHEREAS: Various sites along the Trinity River are contaminated with toxic or hazardous materials as a result of previous land use activities, many of them having been authorized without adequate review of impacts or adequate disclosure to the Tribe of the potential for such impacts, and the contamination at these sites may pose significant risks to the public health; and

WHEREAS: The Tribal Council has concluded that it is necessary to exercise comprehensive tribal regulatory authority over surface mining and other activities in the Trinity River riparian area, and in the riparian areas of tributary creeks and streams, in order to protect fundamental tribal ceremonial, fishery, and property interests, and the public health and safety; and

WHEREAS: Pursuant to federal law as determined by the U.S. Supreme Court in such cases as Montana v. United States, 450 U.S. 544 (1981), the Hoopa Valley Tribe possesses inherent sovereign authority to regulate on-Reservation surface mining and gravel extraction operations, and other activities that affect fundamental tribal interests and the public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned lands within the Reservation; and

WHEREAS: Under 1988 amendments to the Clean Water Act, 33 U.S.C. § 1377, Indian Tribes are entitled to be certified by the U.S. Environmental Protection Agency (EPA) as authorized to exercise exclusive jurisdiction (tribal primacy) over all on-Reservation surface and ground water quality matters, including over on-Reservation portions of waters, such as those of the Trinity River, that also flow through other jurisdictions; and

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WHEREAS: EPA has authorized the Tribe to proceed with the assumption of primacy over on-Reservation water quality, and that authorization has been recognized by the North Coast Regional Water Quality Control Board, which regulates water quality within the Trinity River basin outside of the Reservation; and

WHEREAS: In the past, and continuing to the present, various non-members of the Hoopa Tribe, who own private land within the Reservation, have extracted gravel from and engaged in surface mining operations upon gravel bars along the Trinity River, with serious adverse impacts to ceremonial and fisheries values and to water quality in the Trinity River, and purported regulation of these activities has been ineffective to address these impacts; and

WHEREAS: Currently the operator of Hoopa Valley Ready Mix, a surface mining operation within the Reservation, is seeking approval from the County of Humboldt to continue his operation in a manner that, based on the Tribe's review of the operator's application, will harm the fundamental interests of the Tribe as recited hereinabove; and

WHEREAS: The County of Humboldt lacks any jurisdiction to issue permits to Hoopa Valley Ready Mix, or in any way authorize said operation to continue, because such purported jurisdiction would infringe upon the Tribe's authority to regulate such activities to insure the protection of fundamental tribal interests, and would interfere with the Tribe's relationship with EPA; and

WHEREAS: Because the County may soon purport to act to approve the continued operation of Hoopa Valley Ready Mix, because Hoopa Valley Ready Mix may well attempt to continue to operate under color of County approval, and because such continued operation could result in riverbed and river flow alteration and could cause the release of contamination from an abandoned landfill along the Trinity River that was formerly maintained by Humboldt County, a genuine emergency exists within the meaning of Section 6.10 of the Legislative Procedures Act.

THEREFORE BE IT NOW RESOLVED THAT: The Tribal Council hereby approves the attached **Riparian Protection and Mining Practices Ordinance**, to take effect immediately pursuant to the emergency procedures set forth in Section 6.10 of the

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Legislative Procedures Act (LPA), and further directs that this Ordinance be routed to tribal departments pursuant to the procedures set forth in Section 6.3 of the LPA, so that, subject to any modifications that may be determined necessary or appropriate as a result of comments received during the routing process, it can be adopted on a permanent basis within 30 to 60 days.

BE IT FURTHER RESOLVED THAT: Pursuant to the legal authorities recited above, it is the intent of the Council that the provisions of this Ordinance be enforceable against non-members of the Tribe and upon private lands within the Reservation, and accordingly the Tribal Chairman is authorized and directed, in consultation with the Office of Tribal Attorney, to transmit this Ordinance to the Bureau of Indian Affairs and the EPA for any review and approval that may be necessary, and to seek the support of those agencies for this important assertion of tribal jurisdiction.

BE IT FURTHER RESOLVED THAT: It shall be the policy of the Tribe and its authorized entities and departments to vigorously enforce the provisions of this Ordinance, and to resist any assertion of jurisdiction by Humboldt County, or by the State of California or any of its agencies, that purports to regulate the matters herein regulated by tribal authority.

35.0 SHORT TITLE, FINDINGS, AND PURPOSE

35.0.1 Short Title. This Ordinance shall be known as the **Riparian Protection and Mining Practices Ordinance of the Hoopa Valley Tribe.**

35.0.2 Findings. The Tribal Council hereby finds as follows:

(a) Since time immemorial, the Trinity River, its tributary streams, the streambeds thereof, and the riparian areas and gravel bars adjacent thereto, have been natural resources of the most profound significance to the Hoopa Valley Tribe, and Hoopa Indians have always used these resources for cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life.

(b) It is the position of the Tribe that the bed and

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banks of the Trinity River, as well as the gravel bars and riparian areas adjacent thereto, which lie outside the stakelines of the allotments and former allotments near the River, continue to be unallotted lands of the Hoopa Valley Tribe held in trust for the Tribe by the United States.

(c) The gravel resources in the Trinity River riparian area are a mineral resource within the meaning of federal and tribal law, and extraction or surface mining of these gravel resources has the potential both to generate revenues and create employment for the Tribe and to significantly harm fundamental tribal values in the Trinity River and its riparian area.

(d) Various sites along the Trinity River are contaminated with toxic or hazardous materials as a result of previous land use activities, many of which were authorized without adequate review of impacts or without adequate disclosure to the Tribe of the potential for such impacts, and the contamination at these sites may, if not properly contained and cleaned up, pose significant risks to the public health.

(e) Pursuant to federal law as determined by the U.S. Supreme court in such cases as Montana v. United States, 450 U.S. 544 (1981), the Hoopa Valley Tribe possesses inherent sovereign authority to regulate on-Reservation surface mining and gravel extraction operations, and other activities that affect fundamental tribal interests and the public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned lands within the Reservation.

(f) Under 1988 amendments to the Clean Water Act, 33 U.S.C. § 1377, Indian Tribes are entitled to be certified by the U.S. Environmental Protection Agency (EPA) as authorized to exercise exclusive jurisdiction (tribal primacy) over all on-Reservation surface and ground water quality matters, including over on-Reservation portions of waters, such as those of the Trinity River, that also flow through other jurisdictions.

(g) In the past, and continuing to the present, various non-members of the Hoopa Valley Tribe, who own private

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lands within the Reservation, have extracted gravel from and engaged in surface mining operations upon gravel bars along the Trinity River, with serious adverse impacts to ceremonial and fisheries values and to water quality in the Trinity River, and purported regulation of these activities by agencies of the State and Federal governments has been ineffective to address these impacts.

35.0.3 Purpose. The purpose of this Ordinance is to exercise comprehensive tribal regulatory authority over surface mining and other activities in the Trinity River riparian area, and in the riparian areas of tributary creeks and streams, in order to protect fundamental tribal cultural, ceremonial, fishery, and property interests, and the public health and safety.

35.1 DEFINITIONS

35.1.1 Angle of Repose means the maximum angle of slope (measured from horizontal plane) at which loose cohesionless material will come to rest on a pile of similar material. The angle is generally a few degrees less than the angle of internal friction of the same material. The angle of repose commonly ranges between 33° and 37° on natural slopes and is rarely less than 30° or more than 39°.

35.1.2 Backfill means earth, overburden, mine waste or imported material used to replace material removed during mining.

35.1.3 Bench means a flat surface from which a pit or quarry is worked. The height of the slope between benches is the bench interval. The benches that are left on a final cut are generally termed retaining benches, and serve to retain or limit rock falls from the surface above.

35.1.4 Borrow Pit means excavations created for the mining of rock, unconsolidated geologic deposits or soil which are not on-site construction as defined in this section, are considered to be surface mines unless exempted under Section 35.3(b) of this Ordinance.

35.1.5 Committee means the **Interim Review Committee**, as established under the provisions of Section 35.2 hereof.

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35.1.6 Council means the Hoopa Valley Tribal Council.

35.1.7 Cut Slope (Face) means a bank or slope that has been created by removing material below the pre-existing ground surface.

35.1.8 Critical Gradient means the maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

35.1.9 Fill Slope means a bank or slope that has been built up by the placing of material on top of the existing ground surface.

35.1.10 Grading means to bring an existing surface to a designed form by cutting, filling and/or smoothing operations.

35.1.11 Mined Lands means the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations, are located.

35.1.12 Minerals means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes or organic substances, and includes but is not limited to gravel resources in the areas riparian to the Trinity River and its tributary streams and creeks.

35.1.13 Mining Waste means the residual soil, rock, mineral, liquid, vegetation, mill tailings, equipment, machines, tools or other materials or property directly resulting from, or displaced by, surface mining operations.

35.1.14 On-site Construction means those earth material moving activities (such as excavation, grading, compaction, and the creation of fills and embankments) which are required to prepare a site for construction of structures, landscaping or other land improvements. Such activities are not deemed to be surface mining operations if the resulting excavations,

fills, grades, or embankments are beneficially modified by such construction of structures, landscaping, or other land improvements. Excavations, fills, grades, or embankments that of themselves constitute engineered works such as dams, road cuts, fills, catchment basins, or levees are not considered to be surface mining operations. Earth material moving activities in areas either on or off-site where the resulting excavations, fills, grades, or embankments will not be beneficially modified by the construction of structures, landscaping or other land improvements, and that do not of themselves consist of engineered works are deemed to be surface mining operations unless exempted under Section 35.3(b) of this Ordinance.

35.1.15 Operator means any person or entity engaged in surface mining operations, including any person or entity contracting with another person entity for the performance of surface mining operations.

35.1.16 Overburden means soil, rock, or other material that lies above a natural mineral deposit or in-between mineral deposits, before or after its removal by surface mining operations.

35.1.17 Permit means any formal authorization from, or approval by, the Tribe or its entities and agencies, the absence of which would preclude surface mining operations.

35.1.18 Person means, but shall not be limited to, an individual, trust, firm, company, corporation, partnership, association, agency, municipality, commission, department, or other entity.

35.1.19 Reclamation means a comprehensive process of land treatment and restoration that minimizes water quality degradation, riverbed or river flow alteration, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to under ground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health and safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization or other measures.

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35.1.20 Reclamation Plan means the applicant's (operator's) completed and approved plan for reclaiming the lands affected by his surface mining operations conducted after enactment of this Ordinance, as required and described in Sections 35.5 and 35.6 of this Ordinance.

35.1.21 Reservation means the Hoopa Valley Reservation as it exists as of the date of enactment of this Ordinance or as it hereafter may be enlarged.

35.1.22 Resoiling means the process of artificially building or reconstructing a soil profile.

35.1.23 Subsoil means that part of the soil which is below the topsoil.

35.1.24 Topsoil means the upper part of the soil profile that is relatively rich in humus, which in the field of agronomy is known as the A-horizon of the soil profile.

35.1.25 Toxic Substance means any organic compound, certain metal cations, certain anions, and other inorganic substances, including biostimulants, which singly, or upon combining with other substances, create a condition that will inhibit or destroy the growth or function of any living organism.

35.1.26 Tribe means the Hoopa Valley Tribe acting through the Tribal Council and its authorized entities and programs.

35.2 ESTABLISHMENT OF INTERIM REVIEW COMMITTEE; DUTIES, FUNCTIONS, AND AUTHORITIES

35.2.1 There is hereby established an Interim Review Committee for purposes of carrying out the environmental review process, permit issuance, and reclamation plan review process established by this Ordinance. The Interim Review Committee shall consist of the Tribal Chairman or his representative, one member of the Tribal Council, the Water Quality Specialist from the Planning Department, a representative of the Fisheries Department, and a representative of the Office of Tribal Attorney, and such other persons as designated by the Council in writing.

35.2.2 The Interim Review Committee has authority to specify record keeping requirements which shall be adhered to by all permitted operators.

35.2.3 The Interim Review Committee shall administer mining and mineral development permits and review procedures, as set forth in this Ordinance.

35.2.4 Upon adoption and implementation of this Ordinance, the Review Committee shall establish a listing of categorically exempt projects; such list shall be subject to the concurrence of the Council, subject to annual review and revision, and shall be readily available to the interested public.

35.2.5 The Review Committee shall conduct an Environmental Assessment of any surface mining activity or any other non-exempt activity proposed for the Trinity River riparian area to determine its potential to affect, at a minimum, the river bed, river flow, fishery values, water quality, and ceremonial and cultural values and activities, and to determine whether an Environmental Impact Statement is necessary. No permit shall be issued, nor Reclamation Plan approved, for any activity that does not comply with the requirements of this Section.

35.3 SCOPE

(a) The provisions of this Ordinance shall apply to all proposed mining or mineral development activities within the Trinity River riparian area and elsewhere within the exterior boundaries of the Reservation, including those conducted by non-members of the Tribe or on privately owned lands, subject to exemptions pursuant to paragraph (b) of this section, including but not limited to:

- (1) surface and subsurface removal of mineral resources, overburden, rock, or soil, including quarry operations (borrow pitting) for road surfacing or other uses, unless exempted by the Review Committee and Council under (b) below;
- (2) all prospecting activities involving removal of soil or rock material, including operations involving the reopening of existing mine pits, tunnels, or quarries;

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- (3) Sand and gravel operations.
- (4) Any activities in the Trinity River riparian area with potential to affect the riverbed or river flow, ground or surface water quality, or fishery cultural or ceremonial values.
- (b) Some projects may be exempted from the requirements of this Ordinance if the Interim Review Committee determines that no adverse environmental effects will occur due to the limited size or scale of a proposed project. Such exemptions may include but are not limited to:
 - (1) Excavations or grading conducted for farming, or onsite construction, or for the purpose of restoring land following a flood or natural disaster.
 - (2) Such other mining or excavation operations that the Review Committee and Council determine to be of an infrequent nature or insignificant impact, and which involve only minor surface disturbances;
 - (3) Categorically exempt projects as identified by the Review Committee pursuant to Section 35.2.4 of this Ordinance.

35.4 PERMIT REQUIREMENTS

- (a) Any person who proposes to engage in surface mining operations as defined in this Ordinance shall, prior to the commencement of such operations:
 - (1) Apply for and obtain a valid permit from the Tribal Council, subject to the review and recommendations of the Interim Review Committee;
 - (2) Obtain approval of a Reclamation Plan, in accordance with the provisions set forth in Section 35.6 of this Ordinance.
- (b) A fee, as established by the Review Committee and approved by the Council, for the permitted uses shall be paid to the Tribe at the time of filing.

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- (c) All submissions of a Reclamation Plan for approval shall be made on forms provided by the Interim Review Committee.
- (d) Permit applications, any required environmental documents, and Reclamation Plan proposals must demonstrate compliance with applicable Tribal and federal regulations, including but not limited to those pertaining to water quality, hazardous substances, environmental impact evaluations, and stream bed alterations.
- (e) The applicant is responsible for compliance with applicable federal permit requirements and regulations.

35.5 RECLAMATION PLAN PURPOSE

- (a) The basic purpose and objectives of the reclamation of mined lands are to ensure protection of fundamental tribal interests in the riverbed, river flow, water quality, and ceremonial and cultural values, and to provide for continued beneficial alternative uses of mined and reclaimed lands. The purpose of the reclamation plan is to provide a program by which to attain these objectives.
- (b) New mining operations offer the greatest opportunity for planning and designing for, and carrying out effective reclamation activities. In determining the degree or level of reclamation to be effected, the applicant shall consider a number of factors, including but not limited to those set forth in Section 35.6 of this Ordinance.

35.6 RECLAMATION PLAN REQUIREMENTS

- (a) The applicant shall be responsible for preparing and submitting to the Review Committee a Reclamation Plan which, as a minimum, conforms to the requirements of this Ordinance; applicant shall also be responsible for making any revisions, modifications, or conditions for approval deemed necessary by the Review Committee and Council.
- (b) At a minimum, the following factors shall be taken into account in determining the level, character, and detail

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of the reclamation plan design:

- (1) The size and area of the proposed mined lands;
 - (2) The complexity of the operation and the manner and degree to which the mines are disturbed;
 - (3) The site potential for mineral and other uses;
 - (4) The environmental setting of the operation site and the effect that reclaimed site conditions may have upon the existing and future uses of surrounding lands;
 - (5) The effect that the proposed reclamation activity may have upon the site's remaining unmined resources and/or upon continued mining on adjacent lands;
 - (6) The public health and safety, giving consideration to the degree and type of present and probable future exposure of the public to the site, including but not limited to:
 - (i) likelihood of direct contact with safety hazards or toxic substances;
 - (ii) potential for contamination of drinking water by toxic substances, due to groundwater or surface water contamination;
 - (iii) potential for public exposure to toxic substances in dust from ore pilings, tailings, waste piles, or other project-related sources.
 - (7) The potential for impacts to the riverbed, river flow, ground and surface water quality, fishery values, and ceremonial and cultural values and uses.
- (c) The longevity of mining operations varies greatly. In some operations the reclaiming of mined areas will be undertaken concurrently with the mining of adjoining lands, whereas in many operations much of the reclamation can be effected only after the mining is completed. In those cases where concurrent reclamation

is possible, the Review Committee shall require:

- (1) a time table for commencing such operations;
- (2) periodic submittal of updated progress reports for concurrent reclamation operations.
- (d) The operator shall, in the Reclamation Plan, propose what the end condition of the site will be, and propose reasonable and practicable uses of the reclaimed site. Such proposals shall be in conformance with the policies and regulations contained herein, and with the policies and regulations of other applicable Tribal ordinances.
- (e) Instructions for preparation of Reclamation Plans and Reclamation Plan Forms shall be provided by the Interim Review Committee..

35.7 REVIEW PROCEDURE

- (a) The Interim Review Committee shall review the permit application and the Reclamation Plan and shall schedule a public hearing within 30 days of the filing of both the permit application and the Reclamation Plan, and all necessary environmental documents. Such public hearing shall be held by the Review Committee for the purpose of consideration of the issuance of a permit for the proposed surface mining operation.
- (b) As a condition of approval for a Permit or Reclamation Plan, or both, a schedule for periodic inspections of the site shall be established to evaluate continuing compliance with the Permit Reclamation Plan, and applicable regulations. The Review Committee may, however, conduct unannounced spot checks pursuant to the provisions of Section 35.10 of this Chapter.

35.8 PERFORMANCE BOND

Upon a finding by the Review Committee that a supplemental guarantee for the reclamation of the mined land is necessary, and upon the determination by the Review committee of the cost of the reclamation according to the Reclamation Plan, a surety bond, lien, or other security guarantee conditioned upon the faithful performance of actions as described in the Reclamation Plan shall be filed

with the Review Committee. Such surety shall be executed in favor of the Hoopa Valley Tribal Council, and reviewed and revised, as necessary, biannually. Such surety shall be maintained in an amount equal to the cost of completing the remaining reclamation of the site as prescribed in the approved Reclamation Plan.

35.9 MINING AND RECLAMATION PRACTICES

The following subsections set forth minimum acceptable practices to be followed in mining and reclamation operations:

35.9.1 Soil Erosion Control

- (a) The removal of vegetation and overburden in advance of mining shall be kept to the minimum.
- (b) Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion. This may include, but is not limited to covering stockpiles with netting, canvas, or other materials to prevent detachment and transport loose material by water or wind.
- (c) Erosion control facilities such as retarding basins, settling ponds, ditches, streambank stabilization, and diking shall be constructed and maintained where necessary to control erosion.
- (d) Grading and revegetation shall be designed to both prevent excessive erosion and to convey surface runoff to natural drainage devises or interior basins designed for water storage. Basins that will store water during periods of surface runoff shall be designed to prevent downward erosion of spillways when these basins have outlet to lower ground.

35.9.2 Water Quality and Watershed Control

- (a) A method of compliance with the U.S. Environmental Protection Agency, Tribal, and other applicable regulations and requirements is hereby incorporated into the review process under this Ordinance.
- (b) Settling ponds or basins shall be constructed downstream from areas of potential erosion at operations where they

are necessary to protect water quality and comply with tribal water quality regulations, or where they will provide significant benefit to water quality.

- (c) Temporary stream or watershed diversion shall be restored in final reclamation in a manner which will prevent undue erosion and water quality degradation.
- (d) At sites where ground-water recharge is a significant consideration, operations shall be conducted to substantially prevent siltation of recharge areas.
- (e) Infiltration of toxic substances into groundwater basins shall be prevented where such basin may contribute to domestic or agricultural water supplies.

35.9.3 Flood Control

Compliance with the applicable requirements of other agencies in addition to the Review Committee, including the Tribal Fisheries Department and federal flood control agencies is required when operations occur in or near streams and other drainage channels.

35.9.4 Protection of Fish and Wildlife Habitat

All reasonable measures shall be taken to protect the habitat of fish and wildlife, and to prevent alteration of the river channel and river flow. The Interim Review Committee and Fisheries Departments shall prescribe measures as deemed necessary to better protect such resources.

35.9.5 Disposal of Mine Waste Rock and Overburden

- (a) Permanent piles or dumps of mine waste rock and overburden shall be stable and shall not restrict the natural drainage without suitable provisions for diversion.
- (b) Stable slopes at angle of repose shall be permitted as a final slope.
- (c) Old equipment and other similar inert mining wastes shall be removed or buried.
- (d) Toxic material shall be removed or protected to prevent

leaching.

- (e) Under some conditions, covering of part or all of the mine waste piles with overburden, fine waste and soil may be desirable.
- (f) Where reasonable choices exist, dumps shall be located in least visible location. "Controlled placement" of this material with relationship to topography, hydrology, and end use features can greatly enhance the results of a reclamation program.

35.9.6 Soil Salvage

- (a) The salvage of existing topsoil is an important factor in revegetation and thus is a crucial part of the reclamation process.
- (b) A detailed soil survey may be necessary to determine soil type, and soil chemistry. The complexity of such a survey will depend upon site geology, vegetation, areal extent, and post-mining uses.
- (c) In areas of good soil development, topsoil is a valuable asset and should be segregated for future use in revegetation. In some areas, because of poor or very limited soil conditions, it may be impractical or impossible to salvage soil.
- (d) When the reclamation plan calls for resoiling, coarse hard mine waste shall be leveled and covered with a layer of finer material and weathered waste. A soil layer shall then be placed on this prepared surface.
- (e) Mining operations that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining native materials. The use of soil conditioners, mulches, or imported topsoil shall be considered where revegetation is part of the reclamation plan and where such measures appear necessary. It is not justified, however, to denude adjacent areas of their soil, for any such denuded areas must in turn be reclaimed.

35.9.7 Final Slope Gradient

- (a) The designed steepness and proposed treatment of the final slopes of the mined lands shall take into consideration the physical properties of the slope material, its probable maximum water content, landscaping requirements, and other pertinent factors.
- (b) The maximum stable slope angle might range from 90° in a sound limestone, igneous rock, or similar hardrock to less than 20° in highly expansive clay. In all cases, reclamation plans shall specify slope angles flatter than the critical gradient for the type of material involved. The Review Committee may require an engineering analysis of the slope stability. Special emphasis on slope stability and design will be necessary when public safety or adjacent property may be affected.

35.9.8 Backfilling and Grading

- (a) Most backfilling and grading is undertaken to store mine waste rock and overburden, to produce designed slopes, to establish drainage, or to raise the ground surface above the local water table. Any area mined to produce additional materials for backfilling and grading must also be included in the reclamation plan.
- (b) Settlement of filled areas must be considered in all reclamation plans. Where probable ultimate site uses include roads, building sites, or other improvements sensitive to settlement, the reclamation plans shall include compaction of the fill materials in conformance with good engineering practice to avoid excessive settlement. Fill placement shall conform to local grading ordinances or, in their absence, the Uniform Building Code.

35.9.9 Revegetation

Before final revegetation is undertaken, the operator shall make use of the available research addressing revegetation methods and the selection of species having good survival characteristics, for the topography, resoiling characteristics, and climate of the area. Native species are required wherever possible. Reclamation plans may also include development of screens and roadside plantings at mines currently in operation, where such screens and plantings are practicable and desirable.

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35.10 AUTHORITY TO ENTER AND INSPECT PREMISES AND RECORDS

- (a) In order to carry out the purposes of this Ordinance, any duly authorized representative of the Tribe, has the authority to enter and inspect any property, premises, or facility involved in any mining or other activities on any lands within the exterior boundaries of the Reservation. Such inspection may include:
 - (1) Obtaining samples of soil, rock, vegetation, air, water, or other substances deemed necessary;
 - (2) Setting up and maintaining monitoring equipment for the purpose of assessing compliance with applicable regulations, or health or safety hazards.
 - (3) Photographing any equipment, sample, activity, or environmental condition, provided that:
 - (i) the Review Committee shall notify the person whose operation was photographed prior to public disclosure of such photographs;
 - (ii) upon request of that person, the Department shall allow such person to inspect any such photograph prior to public disclosure to determine whether trade secret information would be revealed by the photograph.
 - (4) Reviewing and obtaining copies of required records.
- (b) The Review Committee or Tribal Council on behalf of the Tribe are authorized to obtain from the Tribal Court a warrant for such entry and inspection if necessary, including for inspection of premises that may be located on lands privately owned by non-members of the Tribe.

35.11 ENFORCEMENT

The provisions of this Chapter shall be enforced by the Department of Public Safety and Emergency Services. It shall be a civil offense, for which a fine of not less than \$100.00 shall be assessed, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe.

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35.12 APPEALS AND JUDICIAL REVIEW

- (a) Any person aggrieved by any act or decision of the Interim Review Committee or Council shall have the right to seek administrative review before the Review Committee, provided that any appeal or complaint must be filed within thirty (30) days after effective date of written decision. The Committee shall conduct a hearing on any appeal, and develop a decision record that is adequate for judicial review.
- (b) Any person may seek judicial review of an order or decision by the Review Committee pursuant the rules of the Tribal Court. The Court shall sustain the decision of the Review Committee if based on substantial evidence in the record before the Review Committee. The Court shall issue any and all orders reasonably necessary to carry out the provisions of this Ordinance, and may assess civil fines for conduct of operations in violation of permit or reclamation plan terms and conditions. The Court may also order the impoundment of equipment used in persistent or serious violation of the requirements of this Ordinance.

35.13 SEVERABILITY

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

35.14 SOVEREIGN IMMUNITY PRESERVED

Except as judicial review is authorized in this Ordinance, nothing in this Ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify: that the Hoopa Valley Tribal Council

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is composed of eight (8) members of which seven (7) were present, constituting a quorum, at a Regular Meeting thereof, duly and regularly called, noticed, convened, and held on this fourth (4th) day of June, 1992; that this Ordinance was duly adopted by a vote of six (6) in favor, none (0) opposed, and none (0) abstaining; and that since its approval this Ordinance has not been rescinded, amended, or modified in any way.

DATED THIS 4TH DAY OF JUNE, 1992.

DALE RISLING SR., CHAIRMAN
HOOPA VALLEY TRIBAL COUNCIL

ATTEST:

CHRISTINA PHILLIPS, EXECUTIVE SECRETARY
HOOPA VALLEY TRIBAL COUNCIL

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